

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #10	CCRB Case #: 201504808	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/03/2015 8:30 PM	Location of Incident: Inside and outside the 42nd Precinct stationhouse	Precinct: 42	18 Mo. SOL 12/3/2016	EO SOL 12/3/2016	
Date/Time CV Reported Wed, 06/03/2015 8:55 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 06/12/2015 11:08 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Bravo Zayas	17717	953601	042 PCT
2. POM Martin Phillips	09298	939223	042 PCT
3. POM Christophe Drews	19602	944519	042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Evan Hodos	4120	944081	042 PCT
2. POM Michael Gargallo	15091	955941	042 PCT
3. POF Daliza Matoslugo	26857	948245	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Bravo Zayas	Force: In front of and inside the 42nd Precinct stationhouse, PO Bravo Zayas used physical force against § 87(2)(b)	
B.POM Martin Phillips	Force: In front of and inside the 42nd Precinct stationhouse, PO Martin Phillips used physical force against § 87(2)(b)	
C.POM Christophe Drews	Force: In front of and inside the 42nd Precinct stationhouse, PO Christopher Drews used physical force against § 87(2)(b)	
D.POM Bravo Zayas	Force: Inside the 42nd Precinct stationhouse, PO Bravo Zayas punched § 87(2)(b)	
E.POM Martin Phillips	Force: Inside the 42nd Precinct stationhouse, PO Martin Phillips used a chokehold against § 87(2)(b)	

Case Summary

On June 3, 2015, § 87(2)(b) exited the 42nd Precinct stationhouse, after being involved in a verbal dispute with officers inside the stationhouse. While walking away from the stationhouse, § 87(2)(b) was allegedly tackled against a vehicle by three officers – PO Bravo Zayas, PO Martin Phillips, and PO Christopher Drews – brought to the ground, and placed under arrest. § 87(2)(b) was taken back to the 42nd Precinct stationhouse, where the officers allegedly dragged him into the holding cell area and punched him in the face and upper body, before pushing him into the holding cell (**Allegation A, B, C**). After being pushed into the cell, PO Zayas entered the cell and allegedly punched § 87(2)(b) in the face (**Allegation D**). PO Phillips then entered the cell and allegedly placed § 87(2)(b) in a chokehold for approximately twenty seconds (**Allegation E**). § 87(2)(b) was left in the cell with other prisoners. After the officers left the holding cell area, § 87(2)(b) got into an altercation with another prisoner, who punched him in the face and caused him to bleed. § 87(2)(b) was subsequently taken to § 87(2)(b) Hospital, where he was evaluated for head trauma. § 87(2)(b) was ultimately charged with resisting arrest, obstructing governmental administration, disorderly conduct (violent behavior), and harassment in the second degree (See: Board Review -- § 87(2)(b) CCRB Complaint; Arrest Report). There is no video footage of the incident.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) rejected mediation. § 87(2)(b) has not filed a Notice of Claim regarding this incident.
- § 87(2)(b)

Civilian and Officer CCRB Histories

§ 87(2)(b)

PO Zayas has been a member of service for three years, and a subject in one previous CCRB force complaint, which was exonerated. § 87(2)(g)

PO Phillips has been a member of service for 10 years, and this is the first CCRB complaint against him.

PO Drews has been a member of service for eight years, and a subject in one previous CCRB force complaint, which was unsubstantiated. § 87(2)(g)

Findings and Recommendations

Subject Officer Identification

PO Zayas (a Hispanic male), PO Phillips (a black male), and PO Drews (a white male) all made memo book entries regarding the incident. PO Zayas and PO Phillips acknowledged apprehending § 87(2)(b) outside the stationhouse, and lodging him in the holding cell. As such, **Allegations A and B** are being pled against PO Zayas and PO Phillips.

PO Drews acknowledged that he assisted PO Zayas and PO Phillips in lodging § 87(2)(b) but denied interacting with him outside the stationhouse. Because the investigation could not find documentary evidence that established PO Drews did not interact with § 87(2)(b) outside the stationhouse, **Allegation C** – encompassing force outside and inside the stationhouse – is being pled against PO Drews.

§ 87(2)(b) stated that a Hispanic male officer, who he named as PO Zayas, punched him inside the holding cell. Because PO Zayas acknowledged punching § 87(2)(b) **Allegation D** is being pled against him. **Allegation E** is being pled against PO Phillips because § 87(2)(b) stated that a black male, who he named as PO Phillips, placed him in a chokehold.

Allegations Not Pleaded

- **Force:** A witness, § 87(2)(b) stated that unidentified officers repeatedly slapped § 87(2)(b) inside the stationhouse, on his face with open palms. Because this allegation was not raised by § 87(2)(b) it is not being pled.

Allegation A – Force: In front of and inside the 42nd Precinct stationhouse, PO Bravo

Zayas used physical force against § 87(2)(b)

Allegation B – Force: In front of and inside the 42nd Precinct

stationhouse, PO Martin Phillips used physical force against § 87(2)(b)

Allegation C – Force: In front of and inside the 42nd Precinct stationhouse, PO Christopher

Drews used physical force against § 87(2)(b)

It is undisputed that officers used some degree of physical force against § 87(2)(b) § 87(2)(g)

§ 87(2)(b) e.

Furthermore, the following facts are undisputed: After being asked to leave the stationhouse, § 87(2)(b) continued to engage verbally with officers, and was ultimately arrested some distance away from the stationhouse (See § 87(2)(b) Statement, Officers' Statements); after being lodged, § 87(2)(b) fought with another prisoner in the cell, and this prisoner caused § 87(2)(b) to bleed from the nose (See § 87(2)(b) Statement).

§ 87(2)(b) stated that after exiting the stationhouse, he began walking away from the building, at which time he saw PO Zayas, PO Phillips, and PO Drews following him. After crossing the intersection of 163rd Street and 3rd Avenue, § 87(2)(b) saw the officers running towards him. Upon reaching him, two of the officers tackled § 87(2)(b) against a vehicle, pressing his face

against it, and brought him to the ground by his knees (See § 87(2)(b) Statement). When he was brought back to the stationhouse, § 87(2)(b) alleged that PO Zayas, PO Phillips, and PO Drews dragged him into the holding cell area, and then proceeded to repeatedly punch him in the face and upper body, while he was handcuffed. (See § 87(2)(b) Statement).

PO Drews stated that he was not involved in apprehending § 87(2)(b) outside the stationhouse, and only saw § 87(2)(b) after he had been arrested (See PO Drews' Statement). Both PO Zayas and PO Phillips stated that after § 87(2)(b) was ejected from the stationhouse, for being disorderly, § 87(2)(b) stood outside the stationhouse and continued to scream and curse at the officers. The officers instructed § 87(2)(b) to leave the area or risk being arrested, at which time he began walking away, still screaming obscenities at the officers. Both PO Zayas and PO Phillips stated that § 87(2)(b) then stood stationary in the middle of 3rd Avenue, and continued to scream at the officers. Because § 87(2)(b) was now obstructing traffic, PO Zayas and PO Phillips approached § 87(2)(b) to place him under arrest, as he was creating a hazardous condition on the roadway. Though § 87(2)(b) tried to flee the officers by crossing 3rd Avenue, PO Zayas and PO Phillips caught up to him. When the officers approached § 87(2)(b) at a close distance, § 87(2)(b) swung at them with a closed fist, without making contact. In response, PO Zayas and PO Phillips restrained § 87(2)(b) by grabbing his arms and pressing his face and body against the frame of a parked van. § 87(2)(b) was handcuffed and brought back to the stationhouse. Both officers denied tackling § 87(2)(b) or bringing him to the ground (See PO Zayas' and PO Phillips' Statements). § 87(2)(b) arrest report narrative is consistent with the officers statements (See Board Review – Arrest Report).

PO Zayas and PO Phillips were consistent in their accounts about what happened with § 87(2)(b) inside the stationhouse. Both officers stated that upon being walked into the holding cell area and uncuffed, § 87(2)(b) refused to remove his belt and shoe laces as instructed. § 87(2)(b) then repeatedly approached the officers, in an aggressive manner, “puffing” his chest out and jerking his body towards them (See PO Zayas' and PO Phillips' Statements). PO Drews corroborated PO Zayas and PO Phillips on the above sequence of actions. However, PO Drews added that § 87(2)(b) ultimately swung at the officers, which caused all three officers to seize § 87(2)(b) restrain him, and bring him to the ground. All three officers were consistent that § 87(2)(b) who was then brought directly before the holding cell, remained combative and uncooperative: standing at the threshold of the cell's entrance, § 87(2)(b) refused to go into the cell, prevented the door from being closed, and pushed his bodyweight back against the officers. At this moment in front of the cell, PO Zayas and PO Phillips testified that § 87(2)(b) was uncuffed. However, PO Drews testified that § 87(2)(b) was cuffed, because the officers had done so after restraining him shortly before (See PO Drews' Statement). The officers' memo book entries are consistent with their CCRB testimonies.

Two other officers, PO Michael Gargallo and Sgt. Evan Hodos, verbally interacted with § 87(2)(b) on the night of the incident. Both officers stated that § 87(2)(b) appeared to be belligerently intoxicated when he first arrived at the stationhouse. Sgt. Hodos, the desk sergeant at the time of the incident, corroborated the officers' accounts of what happened in the holding cells. Sgt. Hodos stated that at some point – he could not specify when – § 87(2)(b) . PO

§ 87(2)(b)

Upon being admitted to the emergency room, § 87(2)(b) told medical personnel that he was “assaulted by police” who hit him “with fists in the head.” § 87(2)(b) also said that he was later “assaulted again by another inmate, who punched him twice in the head.” Medical records from § 87(2)(b) Hospital document that § 87(2)(b) presented a “mild 1 cm swelling and tenderness to midline forehead with no break in skin.” The records also document that § 87(2)(b) arrived at the hospital with dried blood in his nostril. No further injuries are documented in the medical records. § 87(2)(b) arrest photograph does not document any visible injuries (See: Board Review – Medical Records Summary, IA # 149; Arrest Photograph).

The CCRB obtained statements from three witnesses — § 87(2)(b) (a verified statement) and § 87(2)(b) (phone statement), who were lodged in the male cell, and § 87(2)(b) (phone statement), who was lodged in the adjacent female cell. The witnesses did not provide consistent accounts of what happened outside the cells. § 87(2)(b) testified that while § 87(2)(b) was at the front desk, in handcuffs, he repeatedly spat at an officer, causing the officer to slap and then punch § 87(2)(b) in the face (See § 87(2)(b)'s Statement). While officers were escorting § 87(2)(b) toward the holding cell, § 87(2)(b) again spat at one of the officers, after which all four officers slapped § 87(2)(b) face with open hands. § 87(2)(b) did not describe any physical altercation between the officers and § 87(2)(b) outside the cell (See Board Review -- § 87(2)(b)'s Phone Statement, IA #135). § 87(2)(b) stated that § 87(2)(b) refused to remove his belt and shoe laces outside the holding cells, and cursed at the officers, but did not describe any physical altercation between the officers and § 87(2)(b) outside the holding cell (See Board Review -- See § 87(2)(b)'s Phone Statement, IA #118).

Without video documentation or independent witness testimony, the investigation was not able to come to a determination of fact regarding the officers’ alleged use of force outside the stationhouse. For the same reasons, the investigation was not able to come to a determination of fact regarding the officers’ use of force inside the stationhouse. Regarding what happened outside the stationhouse, the force described by § 87(2)(b) and the officers is almost identical, except for § 87(2)(b) allegation that he was taken to the ground. Without video evidence or witness testimony, the investigation was unable to determine the circumstances surrounding the use of force: it is unknown if the officers pursued and applied excessive force in restraining § 87(2)(b) or if § 87(2)(b) resisted arrest by swinging at the officers, thus making the force necessary and minimum. Regarding what happened inside the stationhouse, the investigation could not credit any of the relevant testimonies enough to establish whether the officers’ use of force was unnecessary and excessive. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Allegation D – Force: Inside the 42nd Precinct stationhouse, PO Bravo Zayas punched § 87(2)(b)

It is undisputed that PO Zayas punched § 87(2)(b) in the face, at least once, while § 87(2)(b) was inside the holding cell (See Board Review – IAB Log, PO Zayas’ Statement). § 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that after he was placed inside the holding cell, PO Zayas entered the cell and punched him in the center of his face three to four times (See § 87(2)(b) Statement).

PO Zayas testified that he punched § 87(2)(b) once after § 87(2)(b) spat at him, his spit making contact with PO Zayas. PO Zayas and PO Phillips pushed § 87(2)(b) into the cell, because he refused to go inside while standing at the entrance threshold. Before the cell door could be closed, an uncuffed § 87(2)(b) approached the officers at the entrance, cursing and saying “come on, I’m not going in.” § 87(2)(b) then prevented the cell door from being closed, by blocking it with his body, and spat twice at both PO Phillips and PO Zayas, his spit making contact with PO Zayas’ neck and jaw. In immediate response, PO Zayas punched § 87(2)(b). PO Zayas and PO Phillips then pushed § 87(2)(b) further back into the cell, exited, and closed the door. PO Zayas could not recall exactly where he punched § 87(2)(b) but stated that he only punched him once. PO Zayas did not observe any injuries on § 87(2)(b) face after punching him. The report made to IAB regarding this incident, stated the following: § 87(2)(b) spit in PO Zayas’ face; PO Zayas responded by punching § 87(2)(b) in the face with a closed fist causing § 87(2)(b) to bleed from the nose and mouth.” In his testimony, PO Zayas did not contest this representation of the interaction (See PO Zayas’ Statement).

PO Phillips corroborated PO Zayas in saying that § 87(2)(b) blocked the cell door from being closed, and that § 87(2)(b) repeatedly spat at both officers. After being repeatedly spat at, PO Zayas punched § 87(2)(b) possibly making contact with his cheek. PO Phillips stated that he did not know how many times PO Zayas punched § 87(2)(b) because he was in the process of pushing § 87(2)(b) back to the rear of the cell. § 87(2)(b) was uncuffed. At some point after the physical altercation, PO Phillips took a photograph of § 87(2)(b) to document his physical condition. PO Phillips stated that the photograph was taken at 9:00 pm, and knew this because it was time-stamped on his phone. The photograph does not document any visible injuries on § 87(2)(b) (See: Board Review – PO Phillips’ Photographs of § 87(2)(b) PO Phillips’ Statement).

PO Drews corroborated PO Zayas’ and PO Phillips’ statements that § 87(2)(b) refused to get into the cell, and stated that he spat at all three officers. PO Drews and PO Phillips ultimately pushed § 87(2)(b) to the rear of the cell, exited, and closed the door. PO Drews knew that PO

Zayas punched § 87(2)(b) at some point, but could not specify when or how this happened. PO Drews stated that § 87(2)(b) was handcuffed for this interaction (See PO Drews' Statement).

As analyzed previously, the two witnesses present inside the male holding cell provided conflicting accounts of the incident. § 87(2)(b) stated that § 87(2)(b) was punched by an officer at the front desk, and slapped by several officers outside the cell. § 87(2)(b) stated that § 87(2)(b) was punched repeatedly by three officers inside the cell. § 87(2)(b) did not observe what happened inside the cell (See: § 87(2)(b)'s Statement; § 87(2)(b)'s Phone Statement, IA #135).

According to Patrol Guide Procedure 203-11, an officer is allowed to use only the minimum amount of force that is necessary to overcome resistance (See Board Review – P.G. 203-11). The NYPD's training materials further elaborate on this principle vis-à-vis the "force options wheel," which officers are required to apply against the provocation or condition they are presented with (See Board Review – NYPD Training Materials).

§ 87(2)(b), § 87(2)(g)
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§ 87(2)(g)
[Redacted text block]

Allegation E – Force: Inside the 42nd Precinct stationhouse, PO Martin Phillips used a chokehold against § 87(2)(b)

§ 87(2)(b) alleged that an officer, identified by the investigation as PO Phillips, placed him in a chokehold inside the cell (See § 87(2)(b) Statement).

PO Phillips denied placing § 87(2)(b) in a chokehold. PO Zayas and PO Drews stated that no officer placed § 87(2)(b) in a chokehold (See Officers' Statements).

None of the witnesses described any officer pursuing any action that resembled a chokehold.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Squad:

Investigator:	_____	_____	_____
	Signature	Print	Date
Pod Leader:	_____	_____	_____
	Title/Signature	Print	Date
Attorney:	_____	_____	_____
	Title/Signature	Print	Date